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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 STRIKE 3 HOLDINGS, LLC,

9 Plaintiff,

10 v.

11 JOHN DOE (73.225.38.130),

12 Defendant.

C17-1731 TSZ

MINUTE ORDER

13 The following Minute Order is made by direction of the Court, the Honorable
14 Thomas S. Zilly, United States District Judge:

15 (1) Defendant's motion to dismiss, abate, or for more definite statement,
16 docket no. 21, is DENIED in part and GRANTED in part, as follows:

17 (a) The motion to dismiss or abate this matter because plaintiff is not
18 now, or was not at the time this case was commenced, registered in California as a
19 foreign corporation is DENIED. Although such registration pursuant to California
20 Corporations Code § 2105(a) would be required for plaintiff to maintain suit in a
21 court in California, see Cal. Corp. Code § 2203; see also *Hurst v. Buczek Enters., LLC*,
870 F. Supp. 2d 810, 818-23 (N.D. Cal. 2012), it is not a prerequisite to
filing an action in this court. See *WF Capital, Inc. v. Barkett*, 2010 WL 3064413
at *5 (W.D. Wash. Aug. 2, 2010) (failure to acquire the requisite certificate before
transacting business in California results "only in the imposition of a nominal¹
fine" and preclusion from suing in California courts until a certificate is obtained);
see also Joyce Yeager, *Borders and Barriers, Definitions of Authority to Do*

22 ¹ The Court notes that "nominal" might be an inaccurate description and that the fine (\$20/day) might be
23 hefty if plaintiff has been engaged in unauthorized intrastate business in California for a long time. See
Cal. Corp. Code § 2203(a).

1 *Business as a Foreign Corporation*, 102 COM. L.J. 398, 411 (1997) (“a state
2 cannot require a certificate for authority to conduct business where the foreign
3 corporation is engaged only in interstate business”); *id.* at 422-26 (discussing the
standards applicable to foreign entities transacting both intrastate and interstate
business).

4 (b) The motion for more definite statement is GRANTED. Plaintiff
5 must “give the defendant fair notice of what the . . . claim is and the grounds upon
6 which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (alteration
7 in original, quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). Plaintiff has not
8 done so in this case, and defendant has met the “high” standard for showing that
9 the operative pleading is in need of a more definite statement. *See Sterling Sav.*
10 *Bank v. Stanley*, 2012 WL 13018729 at *2 (E.D. Wash. June 6, 2012) (indicating
11 that under Federal Rule of Civil Procedure 12(e), an assertion that “detail is simply
12 wanting is insufficient” (citing *Castillo v. Norton*, 219 F.R.D. 155, 163 (D. Ariz.
13 2003) (citing *Sheffield v. Orius Corp.*, 211 F.R.D. 411, 414-15 (D. Or. 2002)))).
14 The question is whether the complaint is “so vague or ambiguous” that defendant
15 “cannot reasonably prepare a response.” Fed. R. Civ. P. 12(e). The Court agrees
16 with defendant that the operative pleading does not contain sufficient information
to provide him with notice concerning what copyrighted material was allegedly
infringed. The complaint pleads that plaintiff’s investigator obtained only one or
more **pieces** of the digital media files listed on Exhibit A from defendant’s Internet
Protocol (“IP”) address. Compl. at ¶ 25 (docket no. 1). The complaint further
alleges that a full copy of the digital media files² listed on Exhibit A were obtained
by plaintiff’s investigator from “the BitTorrent file distribution network,” as
opposed to defendant’s IP address. *Id.* at ¶ 26. Although plaintiff contends that
the digital media files listed on Exhibit A contain copies of plaintiff’s copyrighted
works,³ plaintiff does not plead that the **pieces** of the files downloaded from
defendant’s IP address are or contain renderable, viewable versions of plaintiff’s
copyrighted works or any portions thereof. Moreover, although Exhibit A
contains registration numbers (beginning with “PA”) for some of plaintiff’s

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18 ² Plaintiff states that its investigator did not upload plaintiff’s copyrighted works to any BitTorrent user,
19 *see* Compl. at ¶ 28, but plaintiff does not aver under oath that it did not itself make copyrighted material
available via BitTorrent.

20 ³ Defendant argues that plaintiff’s witness, Susan B. Stalzer, failed to indicate whether the digital media
21 files listed on Exhibit A are “identical, strikingly similar or substantially similar” to the deposit copies
22 submitted to the United States Copyright Office. *See* Stalzer Decl. at ¶ 10 (docket no. 4-5). Stalzer’s
23 declaration was one of four declarations that accompanied plaintiff’s motion for leave to serve a subpoena
on the Internet service provider associated with the IP address at issue. *See* Lansky Decl. (docket
no. 4-2); Fieser Decl. (docket no. 4-3); Pasquale Decl. (docket no. 4-4); Stalzer Decl. (docket no. 4-5).
Defendant challenges the veracity and accuracy of these declarations. In evaluating the sufficiency of
plaintiff’s complaint, the Court has not considered the information contained in such declarations, and
therefore does not address defendant’s contentions about their unreliability.

1 copyrighted works, it also provides figures (presumably application numbers) that
2 cannot be used, absent payment of a fee to the United States Copyright Office, to
3 identify the title or other meaningful identifying information about the allegedly
4 copyrighted material, and thus, defendant cannot determine from the complaint
5 what he accused of infringing. Finally, because the operative pleading offers no
6 detail concerning what software or hardware was used by plaintiff's investigator to
7 harvest the pieces of the digital media files at issue and sets forth no facts tending
8 to show that defendant was using the IP address at issue at the times listed in
9 Exhibit A, the Court is unpersuaded that plaintiff has alleged a sufficient link
10 between defendant and the IP address at issue, which might have been spoofed,
11 used without defendant's knowledge or consent, or otherwise falsely implicated.
12 See Michael Piatek, Tadayoshi Kohno, & Arvind Krishnamurthy, *Challenges and*
13 *Directions for Monitoring P2P File Sharing Networks – or – Why My Printer*
14 *Received a DMCA Takedown Notice*, available at <http://dmca.cs.washington.edu>;
15 see also *AF Holdings LLC v. Rogers*, 2013 WL 358292 at *3 (S.D. Cal. Jan. 29,
16 2013) ("Due to the risk of 'false positives,' an allegation that an IP address is
17 registered to an individual is not sufficient in and of itself to support a claim that
18 the individual is guilty of infringement.").

19 (c) Within twenty-eight (28) days of the date of this Minute Order,
20 plaintiff shall electronically file an amended complaint addressing the deficiencies
21 outlined in Paragraph 1(b), above. Defendant's responsive pleading or motion
22 shall be due within fourteen (14) days after plaintiff files its amended complaint.

23 (2) The scheduling conference set for June 14, 2018, is STRICKEN. Counsel
are DIRECTED to meet and confer and to file a revised Joint Status Report within
twenty-one (21) days after plaintiff files an amended complaint.

(3) The Clerk is directed to send a copy of this Minute Order to all counsel of
record.

Dated this 6th day of June, 2018.

William M. McCool
Clerk

s/Karen Dews
Deputy Clerk